

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
No. 7:08-CV-116-D

JEANETTE E. NEWMAN, and)
NORMA E. REGISTER,)
)
)
Plaintiffs,)
)
v.)
)
FIRST MONTAUK FINANCIAL CORP.,)
FIRST MONTAUK SECURITIES CORP.,)
KENNETH R. BOLTON,)
VICTOR K. KURLAK, and)
CELESTE M. LEONARD,)
)
Defendants.)

ORDER

Plaintiffs Jeanette E. Newman and Norma E. Register filed a complaint against defendants First Montauk Financial Corporation, First Montauk Securities Corporation, Kenneth R. Bolton, Victor K. Kurylak, and Celeste M. Leonard [D.E. 1]. On September 23, 2008, defendants filed a motion to dismiss the complaint for failure to state a claim upon which relief can be granted [D.E. 16].

On October 27, 2008, plaintiffs filed an amended complaint [D.E. 22] thereby rendering defendants' motion to dismiss moot. Defendants thereafter withdrew their motion to dismiss [D.E. 25]. On November 26, 2008, defendants filed a motion to dismiss the amended complaint [D.E. 29]. On December 15, 2008, plaintiffs responded in opposition [D.E. 32]. On January 9, 2009, defendants replied [D.E. 37].

The court has considered defendants' motion to dismiss under the governing standard. See Fed. R. Civ. P. 12(b)(6); Erickson v. Pardus, 127 S. Ct. 2197, 2200 (2007) (per curiam); Bell Atl. Corp. v. Twombly, 550 U.S. 544, 560–64 (2007); Giarratano v. Johnson, 521 F.3d 298, 302 (4th Cir. 2008). The court also has considered the parties' arguments about Rule 9(b) of the Federal Rules of

Civil Procedure. Cf., e.g., United States ex rel. Wilson v. Kellogg Brown & Root, Inc., 525 F.3d 370, 379 (4th Cir. 2008); Harrison v. Westinghouse Savannah River Co., 176 F.3d 776, 783–84 (4th Cir. 1999); Higgins v. Spence & Spence, P.A., No. 5:07-CV-33-D, 2008 WL 506187, at *4 (E.D.N.C. Feb. 21, 2008) (unpublished). In light of the governing standard, defendants’ motion to dismiss the amended complaint [D.E. 29] is DENIED.

SO ORDERED. This 27 day of May 2009.


JAMES C. DEVER III
United States District Judge